IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 33976 of 2006(T)

PETITIONER:

P.C. MATHAI, AGED 80 YEARS,
S/O. CHACKO MATHAI, PUTHETHU HOUSE,
THALAKODE POST, KOTHAMANGALAM.

BY ADV. SRI.K.SASIKUMAR
SRI.SURIN GEORGE IPE

RESPONDENTS:

1. THE DISTRICT COLLECTOR, ERNAKULAM.

2. THE SUPERINTENDENT OF POLICE,
ALUVA RURAL, ALUVA.

3. THE CIRCLE INSPECTOR OF POLICE,
KOTHAMANGALAM.

4. THE SUB INSPECTOR OF POLICE, UNNUKKALLU.

5. THE SECRETARY,
KAVALANGATTU GRAMA PANCHAYAT,
NELLIMATTOM, KOTHAMANGALAM.

6. KUNJU MOHAMMED MAULAVI,
AMBATTUKUNNEL HOUSE, THALAKODE P.O.,
KOTHAMANGALAM.

7. CENTRAL JUMA MASJID,
REPRESENTED BY ITS SECRETARY, ABOOBACKER T.A.,
THURUTHEL HOUSE, THALAKODE POST, KOTHAMANGALAM.

BY G.P. SRI.MATHEW G.VADAKKAL
BY ADV. SRI.BABU KARUKAPADATH (r7)
SMT.M.A.VAHEEDA BABU
SRI.M.P.MADHAVANKUTTY (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 33976 of 2006

Dated this 23rd day of January, 2007

JUDGMENT

The petitioner, who is a senior citizen, complains that in violation of order passed by the first respondent-District Collector, respondents 6 and 7 have illegally constructed a burial ground and that respondents 1 to 5 i.e. the District Collector, Superintendent of Police, the Circle Inspector of Police, the Sub Inspector of Police and the Secretary of Kavalngattu Grama Panchayat are not taking any action. The petitioner is a resident of Nellimattom in Neryamangalam Village in Kothamangalam Taluk in Ernakulam District. The 7th respondent – Central Juma Masjid was found starting the construction of a illegal burial ground very near to the house of the petitioner in violation of the provisions of the Kerala Panchayat Raj Act and the Rules and without obtaining permission from the statutory authorities. The petitioner and other residents of the locality approached the first respondent District Collector who in exercise of his powers under the Kerala Panchayat Raj (Burial and Burning Grounds) Rules 1998 passed order dated 24.3.2006 rejecting the application of the 6th respondent for opening and maintaining a

concrete vault type burial ground in 3 cents comprised in survey No.744/1 1/22 of Neriyamangalam Village. The petitioner submits that Ext.P1 order has become final and therefore is bound to be obeyed by respondents 6 and 7. The petitioner points out that it is taking into account the relevant inputs relating to the issues particularly the circumstance that there are dwelling houses within the distance of 15 meters and there exists a clear drinking water well within 10 meters from the site. Ext.P1 order was passed by the first respondent. In spite of Ext.P1, the 7th respondent is now proceedings with the construction of the burial ground, alleges the petitioner. The petitioner submitted Ext.P2 before the first respondent complaining that the 7th respondent is carrying out illegal constructions. Similar complaint was made to respondents 2 to 4 also. Ext.P3 is a copy of the complaint submitted to the 3rd respondent Circle Inspector. Copies of Ext.P3 were served on respondents 2 and 4 also. No action further has been taken so far. On these allegations, the petitioner has raised grounds A to D and prays for issuance of writ of mandamus directing respondents 1 to 5 to ensure that Ext.P1 order dated 24.3.2006 is effectively implemented and for a writ of mandamus

commanding respondents 1 to 5 to demolish the illegal constructions already carried out by respondents 6 and 7 and to penalise them under Rule 13 of the Panchayat Raj Act (Burial and Burning Grounds Rules).

2. Upon this writ petition coming up for admission,on considering the materials placed on record and the submissions addressed by the learned counsel for the petitioner I issued urgent notice on admission to all the respondents and passed an interim direction to respondents 3 and 4 to implement Ext.P1 effectively and to stop all the illegal constructions unless 6th and 7th respondent are able to convince them that Ext.P1 is under stay by any competent authority. The 3rd respondent on receiving notice and after doing the needful was directed to file a report. The 3rd respondent has accordingly filed a report. It is reported therein that the allegations that respondents 2, 3 and 4 have not taken proper action on Ext.P3 petitioner given by the petitioner is baseless. Respondent No. 4 has conducted an enquiry on Ext.P3 petition and the enquiry revealed that the 6th respondent Sri.Kunjumuhammed Maulavi has submitted an application before the first respondent District Collector seeking sanction for opening and maintaining a concrete vault type

burial ground in 3 cents of land. Enquiry also revealed that even though the District Collector has rejected the application by Ext.P1 order, respondents 6 and 7 have constructed two vault type graves in the aforesaid 3 cents of land. There is strong protest from the petitioner and other local residents over the construction of these burial grounds. It is further reported that if respondent 6 and 7 and others under them attempt to bury dead body in the newly constructed aforesaid cemetery the local inhabitants will definitely try to prevent it resulting in law and order problems . For the purpose of avoiding such a serious law and order situation, as a preventive measure 3rd respondent has submitted a report dated 19.12.2006 to the Sub Divisional Magistrate, Muvattupuzha through proper channel for initiating action under Section 144 Cr.P.C. As of now there is no law and order problem in the place but the likelihood of worst law and order situation cannot be ruled out if the respondents 6 and 7 attempt to perform burial in the above vault type newly constructed cemetery.

3. The 7th respondent- Central Juma Masjid has filed a detailed Counter Affidavit through its secretary describing the allegations in the writ petition that burial ground is being

constructed in violation of Ext.P1 as incorrect and misleading. It is stated in the counter affidavit that the 7th respondent mosque is situated in 5½ cents in Sy.No.744/1A/21-6 and that immediately on the western side of the said property an extent of 18.250 cents also belongs to the mosque. Since the members of the 7th respondent had carried their dead bodies for about five KM. for burial it was decided to keep apart three cents out of the aforementioned 18.250 cents adjacent to the mosque compound for burial ground by constructing a concrete vault. It was accordingly that application was submitted by the 7th respondent seeking permission for constructing a concrete vault type burial ground in the said three cents. But the District Collector noticed that at a distance of 23 meters from the said 3 cents there was a tea shop building belonging to one Moolethotiyil Ibrahim and there was a well within the mosque premises and accordingly rejected the application as per Ext.P1. Upon rejection of Ext.P1, the 7th respondent has decided to relocate the burial ground in a different portion of aforementioned 18.250 cents towards the western side so that the requirements under the provisions of the Panchayat Raj (Burial and Burning Ground) Rules will be satisfied. Later seeking review of Ext.P1 order an application

was submitted by the 7th respondent to the first respondent informing that the burial ground has been relocated towards the western side and that the well mentioned in Ext.P1 has been closed down. On coming to know that the review petition was not available in the office of the first respondent the 7th respondent submitted fresh review petition on 22.7.2006. That review petition was returned by the first respondent with a direction to submit fresh application to the Panchayat as required by Rules in prescribed format. Ext.R76(a) dated 11.8.2006 is a copy of the letter issued by the first respondent in that regard. Later on 31.8.2006 a fresh application was submitted to the 5th respondent Panchayat in respect of relocated area for commencement of a contract vault type burial ground. The Officials of the Panchayat insisted to demarcate the exact property by constructing a compound wall around 3 cents to satisfy them about feasibility. It was accordingly that compound wall and a couple concrete vault were constructed by the petitioner. In para 9 of the counter Affidavit it is stated that the respondent does not propose to commission the same for burial without getting permission from the first respondent as specified under the Kerala Panchayta Raj (Burial and Burning

Grounds) Rules 1998. The counter affidavit points out that the Panchayat has already resolved to recommend and forward the fresh application dated 31.8.2006 submitted by the respondent. Ext.R7(b) is a copy of the resolution in that regard. The apprehensions of the petitioner are without any basis. There are no dwelling houses or drinking water well within 15 or 10 meters from the proposed site, the petitioner contends. The site presently proposed is well within the statutory para meters.

4. Heard Sri.K.Sasikumar the learned counsel for the petitioner and Sri.Babu Karukapadath have addressed me in detail on behalf of their respective clients. The learned counsel made submissions on the basis of the pleadings respectively raised by the parities and my attention was drawn to the relevant provision in Kerala Panchayat Raj (Burning and Burial Grounds Rules) by the learned counsel. Heard Sri.M.P.Madhavankutty, the learned counsel for 5th respondent Panchayat who conceded that Ext.r7(b) resolution has been duly adopted by the Panchayat. The learned Government Pleader Sri. Mathew G.Vadakkal would refer to reports submitted by the Circle Inspector of Police . Mr.Sasikumar, counsel for the petitioner would emphatically submit that respondents 5 and 6

are liable to be proceeded against under Rule 13 of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998 since it has been confessed by them that even as Ext.P1 order of the District Collector is in currency they have constructed two concrete walls blatantly violating that order.

5. Mr.Babu Karukapadath per contra would submit on that basis of the counter affidavit that it was under the circumstances stated in the counter affidavit that the walls came to be constructed and that there is no willful violation of Ext.P1.

6. The learned Government Pleader would submit that everything is being done by the Police for maintaining law and order in the area.

Having considered the rival submissions made at the Bar, I am of the view that construction of the concrete walls by respondents 5 and 6 has been in violation of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998 especially since Ext.P1 is in currency. But at the same time the explanation offered by respondents 5 and 6 ought to be considered by the District Collector before taking a decision as to whether prosecution should be lodged against respondents 5 and 6 under Rule 13. Learned counsel for respondents 5 and 6

have undertaken before me that respondents 5 and 6 will not bury even a single corpse in the vaults presently constructed until fresh orders are passed by the District Collector permitting such burial. I record those submissions. As for the request for initiation of prosecution against respondents 5 and 6, I direct the District Collector to issue show-cause notice in that regard to respondents 5 and 6, hear them and also the petitioner and take a decision at the District Collector's earliest and at any rate within six weeks of receiving a copy of this judgment. Respondents 2, 3 and 4 will keep a close watch on the situation and do everything that is necessary if any law and order problem arises in the locality and ensure that the vaults now constructed are not put to use until otherwise permitted by the District Collector.

The Writ Petition will stand disposed of as above.

PIUS C.KURIAKOSE
Judge

dpk/srd